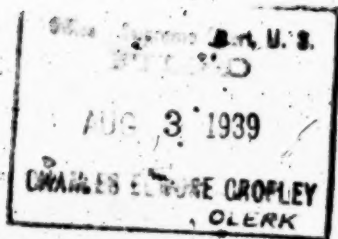


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
PETITIONER,

vs.

THE TEXAS COMPANY (P. R.), INC.,
RESPONDENT.

**BRIEF FOR RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

T. K. SCHMUCK,
LIONEL P. MARKS,
JERROLD H. RUSKIN,
Counsel for Respondent.



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PUERTO RICO

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Act No. 102, approved September 1, 1925	
Sec. 7	7
Sec. 9	3, 4, 5, 8
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All of the above statutes are quoted in the Appendix
to Petitioner's Brief.

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*To the Honorable, The Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Respondent, The Texas Company (P. R.), Inc., respectfully submits its brief in opposition to the petition for writ of certiorari herein, as follows:

Opinions Below.

The opinion of the District Court of San Juan, Puerto Rico (R. 14-19) is not officially reported. The opinions of the Supreme Court of Puerto Rico (R. 26-34 and R. 48-53) are reported in Spanish only (52 P. R. Dec. 658 and 53 P. R. Dec. 475). The opinion of the Circuit Court of Appeals (R. 57-68) is reported in 102 F. (2d) 710.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on March 25, 1939 (R. 68-69). The petition for writ of certiorari was filed June 22, 1939. The jurisdiction of this Court is based on Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

Statutes Involved.

The statutory provisions involved in the determination of this case are quoted in the Appendix to Petitioner's Brief.

Statement of the Case.

This proceeding commenced in the District Court of San Juan, Puerto Rico, with the filing of a bill in equity (R. 1-7) by the respondent to restrain the petitioner from collecting by distraint on respondent's property certain compensation awards of the Workmen's Relief Commission of Puerto Rico. It was respondent's contention that the awards should have been paid out of the state fund and not collected from the respondent as the employer; also that such awards could only be collected by a civil action brought by the Attorney-General of Puerto Rico, and not by distraint or summary attachment.

The case was submitted to the District Court on a stipulation (R. 12-13) which confessed the ultimate facts of the bill and provided that the case was to be determined on certain stated propositions of law. One of these propositions of law was the defense raised by petitioner that there was no jurisdiction in equity to enjoin the collection of the

awards because respondent had had an adequate remedy at law in Section 9 of the Puerto Rico Workmen's Accident Compensation Act (as amended by Act No. 102 of 1925) under which section, petitioner argued, respondent could have appealed from the orders of the Workmen's Relief Commission.

Thus the three main issues involved in this litigation from its inception have been (1) the validity of the orders of the Workmen's Relief Commission directing that the awards be collected from the respondent as the employer; (2) the jurisdiction of equity to restrain the enforcement of the said orders and (3) the authority of the Treasurer of Puerto Rico, the petitioner here, to collect the awards by distraint.

In reversing the decision of the Supreme Court of Puerto Rico (R. 26-34), which affirmed the dismissal (R. 19) of respondent's bill of injunction by the District Court, the Circuit Court of Appeals held:

(1) That the orders of the Workmen's Relief Commission were invalid and subject to collateral attack. (R. 68).

(2) That there was jurisdiction in equity to enjoin their enforcement:

(a) because the remedy of appeal under § 9 of the Workmen's Accident Compensation Act had not been available to the respondent (R. 64) and

(b) because whether or not respondent could have appealed it had no reason to do so, as the awards could only be collected by suit by the Attorney General in which suit all defenses could be raised (R. 64).

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(3) That, in any event, the awards could not be collected by distraint or summary attachment (R. 66-67).

Questions Presented.

It will be seen that the decision of the Circuit Court of Appeals was on three separate and distinct grounds, as follows:

(1) That respondent could not have appealed under § 9.

(2) That there was no reason for respondent to have appealed under § 9 whether it could or not.

(3) That in any event petitioner could not distraint on respondent's property to collect the awards.

If any one of these three holdings of the Circuit Court of Appeals is correct, the petition for certiorari should be denied.

ARGUMENT.

I.

No question is raised which would warrant granting certiorari.

The petition for certiorari is evidently based upon the theory that the Circuit Court of Appeals in its construction of § 9 of the Workmen's Accident Compensation Act, as amended by Act No. 102 of 1925, has decided an important

question of local law in a way in conflict with applicable local decisions.

Respondent submits that there is no ground whatever for granting certiorari on this theory since

(1) the decision of the Circuit Court of Appeals does not rest solely on the construction of Section 9 of the Act, as pointed out above, but rests on two other grounds either one of which standing alone would support the decision;

(2) the Supreme Court of Puerto Rico has never squarely construed Section 9 (see petitioner's brief herein, pp. 19-20);

(3) Section 9 has long since been repealed (see Laws of Puerto Rico, 1928: Act No. 85, Section 57) and has no counterpart in the existing law, so that its construction is a matter of academic interest only;

(4) the construction of Section 9 could at no time have been regarded as "an important question of local law," since that section involved a minor procedural point only.

It is readily apparent from the Statement of the Case in Petitioner's Brief (pp. 6-10) that no general questions of importance are involved in this case. It concerns only the application to the particular facts herein of procedural provisions in certain Workmen's Compensation Acts which have been repealed. Furthermore the equities of the case are clearly with the respondent as petitioner stipulated (R. 12-13) that the ultimate facts of the bill were true and that the case be determined on certain propositions of law raising procedural points only.

II.

The decision of the Circuit Court of Appeals was clearly correct.

In its bill of injunction respondent alleged that it was an insured employer and that this was a matter of record with the Workmen's Relief Commission (R. 2), but that, nevertheless, the Workmen's Relief Commission's orders of April 24, 1928, had declared that respondent was not an insured employer (R. 2) and directed that the compensation awards in controversy be collected from respondent as an uninsured employer (R. 3). The case was submitted to the District Court of San Juan, Puerto Rico, on a stipulation (R. 12-13) which confessed the ultimate facts of the bill and submitted the case on certain stated propositions of law. In the light of these facts, it is clear that petitioner cannot at this late date dispute that the respondent was an insured employer. Had respondent not been an insured employer that fact should and would have been raised by the filing of an answer to the bill. However, petitioner filed no answer and it was only in the Circuit Court of Appeals that petitioner first suggested that respondent had not "negatived all possible hypotheses" so as to establish beyond doubt that respondent was insured.

Since respondent was insured the orders of the Workmen's Relief Commission were issued illegally and without jurisdiction. As stated in the opinion of the Circuit Court of Appeals (R. 68):

" . . . the finding of the Workmen's Relief Commission of April 24, 1928, that the plaintiff was uninsured, was a condition precedent to its exercise

7
of jurisdiction to make the compensation awards against the plaintiff, and that, being a jurisdictional fact, it is open to collateral attack in this proceeding."

The questions before this Court are, therefore, whether respondent had a full, adequate and complete remedy at law of which it should have availed itself in attacking the orders of the Workmen's Relief Commission and whether the remedy of distress was available to the petitioner to enforce the orders.

There can be no question as to the correctness of the decision of the Circuit Court of Appeals in holding that there was jurisdiction in equity to review the orders of the Workmen's Relief Commission since it is not disputed that the only way in which the awards could have been collected at the time they were handed down was by suit by the Attorney General in which suit respondent could have raised the defense that it was insured (see the last paragraph of Section 7 of Act No. 102 of 1925, quoted in petitioner's brief at p. 35): The only reason that respondent was deprived of this opportunity thus to defend itself against the enforcement of the illegal orders of the Workmen's Relief Commission was that statutes subsequently enacted providing other methods for the collection of the awards were improperly given retroactive application, a development which respondent could not have foreseen and which, therefore, should not be held to deprive respondent of its remedy in equity herein.

Finally, the decision of the Circuit Court of Appeals reversed the decision of the Supreme Court of Puerto Rico on an entirely separate and distinct ground: namely, that whether or not the orders of the Workmen's Relief Commission were valid and whether or not respondent could attack them collaterally, they could not be enforced by distraint.

It is not disputed that the alleged authority of the petitioner to collect these awards by distraint must be based either upon Act No. 85 of 1928 (§ 25) or Act No. 45 of 1935 (§ 15), nor is it disputed that both of these acts were passed after the awards in question were made, so that the statutes would have to be applied retroactively. To the contention that the Act of 1928 is the authority for the distraint by the petitioner, it need only be pointed out that that Act was expressly repealed by Act No. 45 of 1935 (§ 51) before the awards were ever referred to the petitioner for collection. As to the applicability of Act No. 45 of 1935, it is only necessary to quote the saving clause contained in Section 34 thereof:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workman shall be entitled to such sum of money as may be prescribed by said laws" (Laws of Puerto Rico, 1935, p. 318).

Conclusion.

The judgment of the Circuit Court of Appeals reversing that of the Supreme Court of Puerto Rico was plainly correct and was based upon three separate and independent grounds, one of which involves no question of construction of Puerto Rican Law, and another of which involves only the question of the propriety of the retroactive application of two Puerto Rican statutes. That part of the decision of the Circuit Court of Appeals which petitioner contends overruled the construction by the Supreme Court of Puerto Rico of Section 9 of Act No. 102 of 1925, and on which peti-

tioner bases his application to this Court for a writ of certiorari, is not only not necessary to the decision but concerns a statutory provision long since repealed and of no possible importance to anyone but the present litigants. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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